



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R04-OAR-2021-0322; FRL-8874-02-R4]

Air Quality Designations; NC: Redesignation of the Brunswick County

2010 Sulfur Dioxide Unclassifiable Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a submission by the State of North Carolina, through the Department of Air Quality (DAQ), received on April 23, 2021, to redesignate the Brunswick County, North Carolina, unclassifiable area (hereinafter referred to as the “Brunswick County Area” or “Area”) to attainment/unclassifiable for the 2010 1-hour primary sulfur dioxide (SO₂) national ambient air quality standard (hereinafter referred to as the “2010 1-hour SO₂ NAAQS”). Because EPA now has sufficient information to determine that the Brunswick County Area is attaining the 2010 1-hour SO₂ NAAQS, the Agency is approving the State’s request to redesignate the Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS.

DATES: This rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0322. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Adams can be reached by telephone at (404) 562-9009 or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the NAAQS. On June 2, 2010, EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010).¹ After the promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country pursuant to section 107(d)(1)-(2) of the CAA. For the 2010 1-hour SO₂ NAAQS, designations were based on EPA's application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results.

EPA completed the first set of initial area designations for the 2010 1-hour SO₂ NAAQS in 2013 (Round 1). Pursuant to a March 2, 2015, consent decree and court-ordered schedule,² EPA finalized a second set of initial area designations for the 2010 1-hour SO₂ NAAQS in 2016

¹ On February 25, 2019 (effective April 17, 2019), EPA issued a decision to retain the existing NAAQS for SO₂. *See* 84 FR 9866 (March 18, 2019).

² *See* *Sierra Club et. al. v. McCarthy*, Civil Action No. 3:13-cv-3953-SI (N.D. Cal.) and 79 FR 31325 (June 2, 2014).

(also called, “Round 2”). For the Round 2 designations, after review of all available information at that time of Round 2 designations, including modeling provided by the State, EPA was unable to determine whether the Brunswick County Area met the definition of a nonattainment area or the definition of an attainment area.³ As a result, EPA designated the entire Brunswick County Area, based on modeling of the Capital Power Incorporated (CPI) Southport Cape Fear facility, as unclassifiable, which was published in the Federal Register on July 12, 2016.⁴ CPI Southport, located on the coast of southeastern North Carolina in the southeastern portion of Brunswick County, was an electric power generation plant with two electric generating units (EGUs) that were permitted to combust a variety of solid fuels, including coal, woody biomass fuels, and tire derived fuel. The unclassifiable area included all six townships (Lockwood Folly Township, Northwest Township, Shallotte Township, Smithville Township, Town Creek Township, Waccamaw Township) within the jurisdictional boundary of Brunswick County.

To address EPA’s 2015 Data Requirements Rule (DRR),⁵ DAQ decided to characterize the air quality in the vicinity of the CPI Southport⁶ facility by installing an air quality monitor (Southport DRR monitor; AQS ID: 370190005) in the area of maximum concentration for the

³ EPA’s March 20, 2015, guidance specified the designation category definitions to be used in the Round 2 designations. Specifically, EPA defined a “nonattainment” area as an area that EPA has determined violates the 2010 1-hour SO₂ NAAQS based on the most recent three years of quality-assured, certified ambient air quality monitoring data or an appropriate modeling analysis, or that EPA has determined contributes to a violation in a nearby area; and defined an “attainment” area as an area that EPA has determined meets the 2010 1-hour SO₂ NAAQS and does not contribute to a violation of the NAAQS in a nearby area based on either: (a) the most recent three years of ambient air quality monitoring data from a monitoring network in an area that is sufficient to be compared to the NAAQS, or (b) an appropriate modeling analysis.

⁴ See 81 FR 45039 (July 12, 2016), effective September 12, 2016) codified at 40 CFR 81.334. Detailed rationale, analyses, and other information supporting EPA’s original Round 2 designation including all supporting materials for the Brunswick County Area, including the technical support document (TSD), can be found on EPA’s SO₂ designations website at <https://www.epa.gov/sulfur-dioxide-designations/epa-completes-second-round-sulfur-dioxide-designations>.

⁵ Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS), Final Rule, 80 FR 51052, August 21, 2015 (<https://www.govinfo.gov/content/pkg/FR-2015-08-21/pdf/2015-20367.pdf>), which required states to undertake air quality characterization for areas with SO₂ sources meeting certain criteria. Specifically, the DRR required state air agencies to provide additional monitoring or modeling information to characterize air quality in areas associated with sources meeting certain criteria or that have otherwise been listed under the DRR by EPA or state air agencies, or to instead impose federally enforceable emission limitations on those sources restricting their annual SO₂ emissions to less than 2,000 tons per year, or provide documentation that the sources have been shut down, by specified dates. The information generated by implementation of the DRR informed EPA’s designations.

⁶ CPI Southport was subject to EPA’s 2015 Data Requirements Rule (DRR) for the 2010 SO₂ 1-hour NAAQS. See <https://www.epa.gov/sites/production/files/2016-06/documents/nc.pdf> for North Carolina’s letter and DRR source list, dated January 15, 2016.

facility.⁷ North Carolina began collecting monitoring data on January 1, 2017.⁸

On April 23, 2021, North Carolina submitted a letter to EPA requesting that the entirety of Brunswick County be redesignated to attainment/unclassifiable based on the newly available monitoring information, which demonstrates attainment of the 2010 1-hour SO₂ NAAQS. To evaluate North Carolina's redesignation request, EPA considered the design value for the air quality monitor in Brunswick County by assessing the most recent three consecutive years (i.e., 2018–2020) of quality-assured, certified ambient air quality data in the EPA Air Quality System (AQS) using data from the Southport DRR monitor that was sited and operated in accordance with 40 CFR parts 50 and 58.⁹ As noted previously, the 2010 1-hour SO₂ NAAQS is met when the design value is 75 ppb or less. The most recent three years of ambient SO₂ monitoring data available shows that the Area is attaining the 2010 1-hour SO₂ NAAQS with a design value of 54 ppb for the period 2018–2020.¹⁰ Additionally, on March 31, 2020, the CPI Southport facility ceased operation, and the DAQ rescinded the facility's operating permit effective April 1, 2021.¹¹

After reviewing North Carolina's redesignation request under CAA section 107(d)(3)(D) and all available information, EPA is now approving North Carolina's request to redesignate the Brunswick County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS based on a valid ambient SO₂ design value that adequately characterizes the SO₂ air

⁷ The Southport DRR monitor is located at the site of maximum concentration based on modeling following the procedures in EPA's February 2016 SO₂ Monitoring TADs, "SO₂ NAAQS Designations Source-Oriented Monitoring Technical Assistance Document" and 40 CFR parts 50 and 58. More details on the analyses used to support the monitor placement are contained in the State's 2016 annual monitoring annual network plan located in the docket for this final action.

⁸ In accordance with the DRR, 40 CFR part 51, subpart BB, through a letter dated June 30, 2016, North Carolina notified EPA that the State chose to characterize peak 1-hour SO₂ concentrations for CPI through air quality monitoring. See https://www.epa.gov/sites/production/files/2016-07/documents/north_carolina_source_characterization.pdf.

⁹ Procedures for using monitored air quality data to determine whether a violation has occurred are provided in 40 CFR part 50, appendix T.

¹⁰ North Carolina early certified the Southport monitor 2018–2020 air quality data in AQS on January 13, 2021. See Table 2 in North Carolina's April 23, 2021, redesignation request.

¹¹ The DAQ's April 1, 2021 letter rescinding Air Quality Permit No. 05884T21 and the January 20, 2021, certified letter from Mr. Frank Hayward, General Manager, CPI USA North Carolina, LLC—Southport Plant to Mr. Brad Newland, P.E., Regional Air Quality Supervisor, Wilmington Regional Office, NC Division of Air Quality, requesting permit rescission are located in the docket for this final action.

quality in the Brunswick County Area and demonstrates attainment of the 1-hour SO₂ standard.

In a notice of proposed rulemaking (NPRM) published on July 2, 2021 (86 FR 35254), EPA proposed to redesignate to attainment/unclassifiable the Brunswick County Area in its entirety. As discussed in the NPRM, this final action is based on the currently available monitoring data described in that NPRM that demonstrate attainment of the 2010 1-hour SO₂ NAAQS. The 30-day public comment period for the NPRM closed on August 16, 2021. EPA did not receive any comments on the proposed redesignation of Brunswick County, North Carolina. The details of North Carolina's redesignation request and the rationale for EPA's actions are further explained in the NPRM.

III. Final Action

EPA is approving North Carolina's April 23, 2021, request to redesignate the Brunswick County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS. The final action is based on the currently available monitoring data for the Brunswick County Area that demonstrate attainment of the 2010 1-hour SO₂ NAAQS. This approval of the redesignation request changes the legal designation, found at 40 CFR part 81, of Brunswick County from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO₂ NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Accordingly, this action merely redesignates an area to attainment/unclassifiable and does not impose additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final redesignation does not apply to any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 20, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 81.334, the table titled “North Carolina–2010 Sulfur Dioxide NAAQS [Primary]” is amended by:

- a. Revising the “Designated area” and “Date” column headings;
- b. Removing the entries for “Brunswick County, NC”, “Brunswick County”, “Lockwood Folly Township, Northwest Township, Shallotte Township, Smithville Township, Town Creek Township, Waccamaw Township”, and “Rest of State.”;
- c. Adding an entry for “Brunswick County” before “Buncombe County”;
- d. Adding an entry for “Lockwood Folly Township, Northwest Township, Shallotte Township, Smithville Township, Town Creek Township, Waccamaw Township” under “Brunswick County”; and
- e. Removing footnote 2 and redesignating footnotes 1 and 3 as footnotes 2 and 1, respectively.

The revisions and additions read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA – 2010 SULFUR DIOXIDE NAAQS
[Primary]

Designated area ¹	Designation	
	Date ²	Type
**	**	***
Brunswick County	<u>[Insert date 30 days after date of publication in the FEDERAL REGISTER]</u>	Attainment/Unclassifiable.
Lockwood Folly Township, Northwest Township, Shallotte Township, Smithville Township, Town Creek Township, Waccamaw Township		
**	**	***

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² This date is April 9, 2018, unless otherwise noted.

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[FR Doc. 2021-20639 Filed: 9/27/2021 8:45 am; Publication Date: 9/28/2021]